



**Virginia
Regulatory
Town Hall**

**Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	Board of Juvenile Justice
VAC Chapter Number:	6 VAC 35-140
Regulation Title:	Standards for Juvenile Residential Facilities
Action Title:	Amend to include mandated standards governing post-dispositional detention, and to reinstate historical standards closely conforming to nationally recognized standards of good correctional practices.
Date:	July 9, 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The contemplated revisions to the regulation fall into two broad categories: In the first category are new or expanded standards governing post-dispositional detention programs, as required by Code of Virginia Section 16.1-284.1.D: "Standards for these facilities shall require juveniles placed pursuant to this section for a period which exceeds thirty calendar days to be provided separate services for their rehabilitation, consistent with the intent of this section."

In the second category are new or expanded standards to comply with those of national accrediting organizations such as the American Correctional Association and the National Commission on Correctional Health Care. The Department is committed to meet such national standards in the operation of its juvenile correctional facilities. For the most part, the proposed changes will affect only juvenile correctional centers and will impose no additional burden on locally operated programs. It should be noted that many of the contemplated standards were applicable to juvenile correctional centers prior to January 1998, when the regulation was simplified to give juvenile residential facilities greater operational flexibility. Although the

Department has continued to operate in accordance with many of the nationally recognized standards that were deleted in the 1998 revision, removal of those standards from this regulation also deprived the agency of the most reliable means for documenting its continued compliance with those standards, which is the Board of Juvenile Justice's certification process. By reinstating many of the standards that were in effect prior to January 1998, and by adopting other standards issued by national correctional accrediting bodies, the Department is underscoring its commitment to operate in accordance with -- and to demonstrate its compliance with -- the best practices in juvenile corrections.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The general authority of the Board of Juvenile Justice to promulgate regulations is found in Code of Virginia § 66-10 (6), which provides that the Board shall have the power and duty "[t]o promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department."

The specific legal authority of the Board to promulgate regulations governing local juvenile residential facilities is Code of Virginia § 16.1-309.9.A., which directs that "The State Board of Juvenile Justice shall develop, promulgate and approve standards for the development, implementation and evaluation of the range of community-based programs, services and facilities authorized by this article." In addition, Code of Virginia § 16.1-248.1 (D) provides that "A juvenile may only be ordered confined pursuant to this section to a facility in compliance with standards established by the State Board for such placements. Standards for these facilities shall have regard for reasonable utilization of these facilities and the requirements of § 16.1-309.4, consistent with the intent of this section."

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a

statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The following is a summary of the proposed regulatory changes. Throughout the draft regulation, detailed explanations are provided in text boxes following each proposed change.

New standards governing post-dispositional detention are required. Ad hoc work groups are drafting language to clarify that certain programming or treatment requirements apply only when the court orders a post-dispositional detention in excess of 30 days; to require that post-dispositional services be separate from any pre-dispositional services; to provide guidelines regarding the statutorily mandated assessment as to the juvenile's suitability for the post-dispositional program; to require that treatment be provided only by properly qualified persons; and to require policies governing the provision of any treatment by providers from outside the facility. Additional provisions will make it clear that when a juvenile is placed in a post-dispositional program for longer than thirty days, certain requirements of the Interdepartmental Standards for Children's Residential Facilities will apply.

The Director of the Department of Juvenile Justice has committed the agency to comply, to the greatest extent possible under Virginia's laws, with nationally recognized standards. To this end, staff are researching a number of terminology changes to ensure that terms used in the regulation mean the same thing as they mean in nationally recognized standards.

In addition, the agency is considering reinstating many standards were in effect for juvenile correctional centers prior to January 1998. Many of these standards have been incorporated into various agency procedures, and as such have continued to guide the Department's operations. Some examples include supervision of outside personnel working in the facility; giving residents shall have the opportunity to shower after strenuous exercise; maintaining control of the facility perimeter; requiring a record of mechanical restraint distribution; preparing an statement of each institution's mission and organization; identifying the service needs of resident population; establishing community-facility advisory committees; requirements for financial practices; guidelines for living conditions in segregation; staff to acknowledgement of their shift assignments; supervision and control when youth are being moved; prohibiting youth from supervising other youth; dayroom furnishings; the ratio of counseling staff to youths and availability of counseling services; making institutional operating procedures available to staff and the public; developing new or revised policies; annual evaluation of information system; governing media access to a facility; establishing a public information program; guidelines for employment, restitution and school release programs; hospital services; access to health care and provision of medical care; religious programs; guidelines for visitation; recreation staff and equipment; regarding programs to reinforce positive behavior; youth access to publications; staff code of ethics; staff performance review; reimbursement of approved expenses; legal assistance for staff; political activity; daily inspections, sanitation inspections and housekeeping; emergency power source; canteen; hair care services; superintendent's review of personnel policies; review of research proposals; requirements of food services; detainers; release consideration and a program of release preparation.. ...

Some standards that were in effect prior to January 1998 will not be merely reinstated, but will be strengthened or modified based on a review of national standards and agency practice. Possible examples include: minimum frequency for sick call; provisions for prostheses and related medical devices; transitional placements; documentation of vacancy rate; scheduling of

release consideration; and progressive preparation for release. Potentially significant changes are being considered for room confinement, including new requirements for staff supervision and the opportunity for exercise.

In addition, some new standards are being considered based on nationally recognized standards. Examples include requiring single occupancy rooms for juveniles who meet certain criteria; requiring notification of and action by the health authority whenever a juvenile is placed in segregation; requiring procedures for dealing with the media in emergency and non-emergency situations; requiring that space be made available for religious services; regulating the presence of firearms at a facility; and inspection and maintenance of security devices.

Adaptations or variants of nationally recognized standards are also being considered. Examples include guidelines regarding the proximity of staff offices and duty stations to wards' living areas; day leave into the community; staff training; and pre-parole transitional graduated release.

Finally, a few changes are being considered to more accurately reflect the Department's actual practice. For example, current standard 6 VAC 35-140-540 (C), requiring that "Staff shall always be in plain view of a staff person of the opposite sex when entering an area occupied by residents of the opposite sex," cannot always be met simply by virtue of the fact that the Department does not assign staff on the basis of gender, so that at any given time there may not be staff of both sexes present. A revision is being prepared that would maintain the "sight requirement" (without any gender requirement) when entering an area occupied by residents of the opposite sex. Also, there is a need to clarify the conditions under which certain employees may begin work pending the completion of a background check. Amendments are also needed to clarify that the Board has never authorized, and has no intention of authorizing, the use of tear gas or mace in juvenile correctional facilities.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

Because the General Assembly continues to require the development of standards applying to various classes of juvenile residential facilities (See, for example, the 2000 Appropriations Act, item 476.A.3.: "The State Board of Juvenile Justice shall prescribe standards for the development, operation and evaluation of programs and services [for postsentencing alternatives for juvenile offenders eligible for commitment to the Department but who may require confinement less secure than a state juvenile correctional center]," and also Code of Virginia § 16.1-248.1, it is not realistic to contemplate an alternative that completely does away with regulations governing juvenile residential facilities. One alternative the Department has tried, is to reduce and simplify the contents of the regulation itself, as was done with the revisions that took effect in January 1998. The premise was that juvenile correctional facilities could operate more flexibly if they incorporated nationally recognized standards and best practices into agency-level policies and procedures, rather than being subjected to many specific requirements set out in detail in a regulation. One major shortcoming of that experiment is that the Department (as well as local and regional facilities) lost a convenient and credible method of documenting compliance with those national standards and best correctional practices; namely, the Board's well-established certification process. To the greatest extent possible under Virginia law and in consideration of

the needs of Virginia's juvenile justice system, the Department is committed to following, nationally recognized standards for juvenile correctional facilities. But the Department must not only follow such standards; it must be able to document that it does so. That is the rationale for reinstating many of the individual standards that were in effect for juvenile correctional centers prior to January 1998.

There is one other alternative that the Department has considered: adopting a regulatory framework whereby facilities would be encouraged to obtain accreditation through, for example, the American Correctional Association, and considering such accreditation to be "deemed compliance" with Virginia regulations. The Department's Assistant Attorney General has advised that such an approach would be problematic, and that a clearer, more direct and more legally acceptable approach would be to incorporate such ACA (and other national) standards as the Board deems appropriate into Virginia's regulations governing juvenile residential facilities. That is the approach taken in this proposed revision.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The amendments regarding post-dispositional detention should (indirectly) strengthen the institution of the family. At the heart of the statutory provision for locally-operated post-dispositional detention programs is the notion that in some cases, juveniles who would otherwise be committed to state care can be better treated in or near their own communities, close to their families and other support systems.

There are few amendments throughout the regulation that will potentially strengthen the institution of the family. For example, new 6 VAC 35-140-791 makes specific provision for wards to leave the facility under supervision of trained facility staff for needed medical and dental care, to visit ill family members or to attend funerals. In addition, new 6 VAC 35-140-815 permits informal communication and opportunity for physical contact during family visits to the facility.

Otherwise, the regulation will have little or not impact on the institution of the family.